

JUDGE CASTEL

07 CV 1353  
CIVIL COVER SHEETJS 44C/SDNY  
REV. 12/2005

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS Jerry Williams, Jr. and Gerald Barnes Sr., Individually and on Behalf of All Other Persons Similarly Situated

DEFENDANTS Uptown Communications & Electric, Inc., and Time Warner, Inc.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) ATTORNEYS (IF KNOWN)

Berger & Gottlieb Attorneys  
150 E. 18th Street, Suite PHR

New York, NY 10003

212 228-9795

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

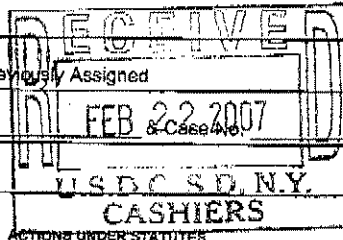
29 U. S. C. 201 et seq. - Unpaid overtime wages pursuant to FLSA and Class under FRCP 23 (b) NY Labor Law

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date

(PLACE AN (X) IN ONE BOX ONLY)

NATURE OF SUIT



ACTIONS UNDER STATUTES

CONTRACT	PERSONAL INJURY	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE
[ ] 120 MARINE	[ ] 316 AIRPLANE PRODUCT	[ ] 362 MED MALPRACTICE	[ ] 620 FOOD & DRUG	28 USC 158	REAPPORTIONMENT
[ ] 130 MILLER ACT	[ ] 320 LIABILITY	[ ] 365 PERSONAL INJURY	[ ] 625 DRUG RELATED	[ ] 423 WITHDRAWAL	[ ] 410 ANTI-TRUST
[ ] 140 NEGOTIABLE	[ ] 320 ASSAULT, LIBEL &	[ ] 365 PRODUCT LIABILITY	SEIZURE OF	28 USC 157	[ ] 430 BANKS & BANKING
INSTRUMENT	ISLANDER	[ ] 368 ASBESTOS PERSONAL	PROPERTY		[ ] 450 COMMERCE/ICC
[ ] 150 RECOVERY OF	[ ] 330 FEDERAL	[ ] 368 INJURY PRODUCT	21 USC 881	PROPERTY RIGHTS	RATES/ETC
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[ ] 630 LIQUOR LAWS	[ ] 480 DEPORTATION	[ ] 470 RACKETEER INFLU-
ENFORCEMENT OF	LIABILITY		[ ] 640 RR & TRUCK	[ ] 820 COPYRIGHTS	ENCED & CORRUPT
JUDGMENT	[ ] 340 MARINE	PERSONAL PROPERTY	[ ] 650 AIRLINE REGS	[ ] 830 PATENT	ORGANIZATION ACT
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT		[ ] 660 OCCUPATIONAL	[ ] 840 TRADEMARK	(RICO)
[ ] 152 RECOVERY OF	LIABILITY	[ ] 370 OTHER FRAUD	[ ] 680 SAFETY/HEALTH		[ ] 480 CONSUMER CREDIT
DEFAULTED	[ ] 350 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING	[ ] 690 OTHER	SOCIAL SECURITY	[ ] 490 CABLE/SATELLITE TV
STUDENT LOANS	[ ] 355 MOTOR VEHICLE	[ ] 380 OTHER PERSONAL	LABOR	[ ] 861 MIA (1385FF)	[ ] 810 SELECTIVE SERVICE
(EXCL VETERANS)	PRODUCT LIABILITY	PROPERTY DAMAGE	[ ] 710 FAIR LABOR	[ ] 862 BLACK LUNG (823)	[ ] 850 SECURITIES/
[ ] 153 RECOVERY OF	[ ] 360 OTHER PERSONAL	PRODUCT LIABILITY	[ ] 720 LABOR/MGMT	[ ] 863 DMIC (405(g))	COMMUNITIES/
OVERPAYMENT OF	INJURY		RELATIONS	[ ] 863 DIWW (405(g))	EXCHANGE
VETERANS BENEFITS			[ ] 730 LABOR/MGMT	[ ] 864 SSID TITLE XVI	[ ] 875 CUSTOMER
[ ] 160 STOCKHOLDERS SUITS			REPORTING &	[ ] 865 RSI (405(g))	CHALLENGE
[ ] 190 OTHER CONTRACT			DISCLOSURE ACT		12 USC 4110
[ ] 195 CONTRACT PRODUCT			RAILWAY LABOR ACT	FEDERAL TAX SUITS	[ ] 891 AGRICULTURE ACTS
LIABILITY			[ ] 740 OTHER LABOR	[ ] 870 TAXES	[ ] 892 ECONOMIC
[ ] 196 FRANCHISE			LITIGATION	[ ] 871 IRS-THIRD PARTY	STABILIZATION ACT
			[ ] 791 EMPL RET INC	20 USC 7609	[ ] 893 ENVIRONMENTAL
			SECURITY ACT		MATTERS
					[ ] 894 ENERGY
					ALLOCATION ACT
					[ ] 895 FREEDOM OF
					INFORMATION ACT
					[ ] 900 APPEAL OF FEE
					DETERMINATION
					UNDER EQUAL ACCESS
					TO JUSTICE
					[ ] 950 CONSTITUTIONALITY
					OF STATE STATUTES
					[ ] 990 OTHER STATUTORY
					ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ OTHER JUDGE DOCKET NUMBER

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN X IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding    ☐ 2a. Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from (Specify District)    ☐ 6 Multidistrict Litigation    ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- AND at least one party is a pro se litigant

(PLACE AN X IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF    ☐ 2 U.S. DEFENDANT    ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)    ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] [ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] [ ]	INCORPORATED <del>and</del> PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] [ ]
CITIZEN OF ANOTHER STATE	[ ] [ ]	INCORPORATED <del>or</del> PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] [ ]	FOREIGN NATION	[ ] [ ]

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Jerry Williams Jr.  
106-05 159th Street  
Jaimaca, Queens County, New York

Gerald Barnes Sr.  
3304 Ferdilah Lane,  
Raleigh, North Carolina

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Uptown Communications & Electric, Inc.  
223 Greenpoint Avenue  
Brooklyn, Kings County, New York

Time Warner, Inc.  
One Time Warner Center  
New York, New York County, New York

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE  
(DO NOT check either box if this is a PRISONER PETITION.)

DATE 2/21/07 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO☒ YES (DATE ADMITTED Mo. 1 Yr. 1977)Attorney Bar Code # 26 7905

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

AO 440 (Rev. 10/93) Summons in a Civil Action - SDNY WEB 4/99

# United States District Court

DISTRICT OF

Jerry Williams, Jr. and Gerald Barnes, Sr.,  
Individually and on Behalf of All Other Persons  
Similarly Situated

## SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

Uptown Communications & Electric, Inc., and  
Time Warner, Inc.

**07 CV 1353**

TO: (Name and address of defendant)

JUDGE CASTEL

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Jeffrey M. Gottlieb, ESQ.  
Berger & Gottlieb Attorneys  
150 East 18th Street, Suite PHR  
New York, NY 10003  
Telephone: (212) 228-9795

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

FEB 22 2007

CLERK

DATE

(BY) DEPUTY CLERK

AD 440 (Rev. 10/93) Summons in a Civil Action -SDNY WEB 4/99

<b>RETURN OF SERVICE</b>		
Service of the Summons and Complaint was made by me <sup>1</sup>	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
<input type="checkbox"/> Returned unexecuted: _____ _____ _____		
<input type="checkbox"/> Other (specify): _____ _____ _____		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____  <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span>Date</span> <span>Signature of Server</span> </div>   <div style="display: flex; justify-content: flex-end; width: 80%; margin-right: 0;"> <span>Address of Server</span> </div> </p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

JUDGE CASTEL

07 CV 1353

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JERRY WILLIAMS, Jr. and GERALD BARNES Sr., Individually  
and on Behalf of All Other Persons Similarly Situated,

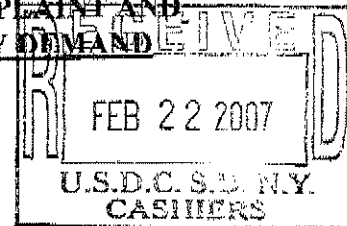
Plaintiffs,

-against-

UPTOWN COMMUNICATIONS & ELECTRIC, INC.,  
and TIME WARNER, INC.

Defendants.  
-----X

COMPLAINT AND  
JURY DEMAND



**NATURE OF THE ACTION**

1. Plaintiffs alleges on behalf of themselves and other similarly situated current and former employees of the Defendants who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216(b), that they are: (i) entitled to unpaid wages from Defendants for overtime work for which they did not receive overtime premium pay, as required by law and entitled to unpaid wages for improper deductions from their wages by Defendants, and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. §§201 *et seq.*

2. Plaintiffs further complain on behalf of themselves, and a class of other similarly situated current and former employees of the Defendants, pursuant to Fed.R.Civ.P. 23, that they are entitled to back wages from Defendants for overtime work for which they did not receive overtime premium pay as required by the New York Labor Law §§ 650 *et seq.* as well as back wages for improper deductions from their wages.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337, 1343, and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiffs' claims under

the FLSA pursuant to 29 U.S.C. § 216(b).

4. Venue is proper in this district pursuant to 28 U.S.C. §1391.

5. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

#### **THE PARTIES**

6. a)Plaintiff, Jerry Williams, Jr. was, at all relevant times, an adult individual, residing in Jamiaca, New York. and b)Plaintiff, Gerald Barnes, Sr. was, at all relevant times, an adult individual residing in Raleigh, North Carolina.

7. Upon information and belief, Defendant Uptown Communications & Electric, Inc. ("Uptown") is a New York corporation, with its principal place of business at 223 Greenpoint Ave., Brooklyn, New York. Defendant Uptown is present in this jurisdiction by virtue of its doing business herein.

8. Upon information and belief, Defendant Time Warner, Inc.. ("Time Warner") is a Delaware corporation, with its principal place of business at One Time Warner Center, New York, New York. Defendant Time Warner is present in this jurisdiction by virtue of its doing business herein.

9. Upon information and belief, Defendants employed the Plaintiffs.

10. As used herein, the term "Defendants" will refer to Uptown and Time Warner, collectively.

#### **COLLECTIVE ACTION ALLEGATIONS**

11. Pursuant to 29 U.S.C. §207, Plaintiffs seeks to prosecute their FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendants at any time since February 21, 2004 to the entry of judgment in this case (the

“Collective Action Period”), who were non-exempt employees within the meaning of the FLSA and who were not paid overtime compensation at rates not less than one-half times the regular rate of pay for hours worked in excess of forty per workweek or had improper deductions made from their wages (the “Collective Action Members”).

12. This collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are approximately 200 members of Class during the Collective Action Period, most of whom would not be likely to file individual suits because they lack adequate financial resources, access to attorneys or knowledge of their claims.

13. Plaintiffs will fairly and adequately protect the interests of the Collective Action Members and have retained counsel that is experienced and competent in the fields of employment law and class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those members of this collective action.

14. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

15. Questions of law and fact common to the members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the common questions of law and



fact common to Plaintiffs and other Collective Action Members are:

- a. whether the Defendants employed the Collective Action members within the meaning of the FLSA;
- b. what proof of hours worked is sufficient where the employer fails in its duty to maintain time records;
- c. whether Defendants failed to post or keep posted a notice explaining the minimum wages and overtime pay rights provided by the FLSA in any area where Plaintiffs are employed, in violation of C.F.R. § 516.4;
- d. whether Defendants failed to pay the Collective Action Members overtime compensation for hours worked in excess of forty hours per workweek or made improper deductions from their wages, in violation of the FLSA and the regulations promulgated thereunder;
- e. whether Defendants' violations of the FLSA are willful as that term is used within the context of the FLSA;
- f. whether Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive and statutory damages, interest, costs and disbursements and attorneys' fees; and
- g. whether Defendants should be enjoined from such violations of the FLSA in the future.

16. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

#### **CLASS ALLEGATIONS**



17. Plaintiffs sue on their own behalf and on behalf of a class of persons under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

18. Plaintiffs bring their New York Labor Law claim on behalf of all persons who were employed by Defendants in the State of New York at any time since February 21, 2001, to the entry of judgment in this case (the "Class Period"), who were non-exempt employees within the meaning of the New York Labor Law and have not been paid overtime wages or had improper deductions made from their wages in violation of the New York Labor Law (the "Class").

19. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are approximately 500 members of Class during the Class Period.

20. The claims of Plaintiffs are typical of the claims of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy—particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate Defendants.

21. The Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

22. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in employment law and class action litigation.

23. Plaintiffs have the same interests in this matter as all other members of the class and Plaintiffs' claims are typical of the Class.

24. There are questions of law and fact common to the Class which predominate over any questions solely affecting the individual members of the Class, including but not limited to:

- h. whether the Defendants employed the members of the Class within the meaning of the New York Labor Law;
- i. what proof of hours worked is sufficient where employers fail in their duty to maintain time records;
- j. whether Defendants failed and/or refused to pay the members of the Class premium pay for hours worked in excess of forty hours per workweek and more than ten hours a day or made improper deductions from their wages within the meaning of the New York Labor Law;
- k. whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive and statutory damages, interests, costs and disbursements and attorneys' fees; and
- l. whether the Defendants should be enjoined from such violations of the New York Labor Law in the future.

#### **STATEMENT OF FACTS**

25. At all relevant times, Defendant Uptown distributed, installed and serviced equipment for telephones, cable television and internet access for and on behalf of Defendant Time Warner.

26. At all relevant times, Defendant Time Warner provided telephone, cable

television and internet services to customers in the State of New York and throughout most of the United States.

27. Upon information and belief, at all relevant times, Defendant Uptown and Defendant Time Warner entered into an Agreement(s) whereby Defendant Uptown would provide Defendant Time Warner with technicians who would distribute, install and service the aforesaid equipment.

28. a) Starting in or about January, 2003, Plaintiff Jerry Williams, Jr. was employed by Defendants as a technician, distributing, installing and servicing the aforesaid equipment and is so employed at present.

b) Starting in or about February, 2004 until in or about December, 2006, Plaintiff Gerard Barnes Sr., was employed by Defendants as a technician, distributing, installing and servicing the aforesaid equipment.

29. Plaintiffs' work was performed in the normal course of the Defendants' businesses and was integrated into the businesses of the Defendants.

30. The work performed by Plaintiffs required little skill and no capital investment. Their duties did not include managerial responsibilities or the exercise of independent judgment.

31. Plaintiffs often worked in excess of 40 hours a week, yet the Defendants willfully failed to pay Plaintiffs overtime compensation of one and one-half times their regular hourly rate, and for an extra hour in each day worked over ten hours, or made improper deductions from their wages in violation of the FLSA and the New York Labor Law.

32. Plaintiffs were employed by the Defendants as set forth above. Throughout this time and, upon information belief, both before that time (throughout the Class

Period) and continuing until today, the Defendants have likewise employed other individuals, like the Plaintiffs (the Collective Action Members/the Class) in positions that required little skill and no capital investment and their duties and responsibilities did not include any managerial responsibilities or the exercise of independent judgment. They do not have the authority to hire or fire other employees, and they are not responsible for making hiring and firing recommendations.

33. Such individuals have worked in excess of 40 hours a week and more than 10 hours a day, yet the Defendants have likewise willfully failed to pay them overtime compensation of one and one-half times their regular hourly rate, and for an extra hour in each day worked over ten hours, or made improper deductions from their wages in violation of the FLSA and the New York Labor Law. As stated, the exact number of such individuals is presently unknown, but within the sole knowledge of the Defendants and can be ascertained through appropriate discovery.

34. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiffs' own employment, while Defendants employed Plaintiffs and the Collective Action Members/the Class, the Defendants failed to maintain accurate and sufficient time records and failed to post or keep posted a notice explaining the minimum wage and overtime pay rights provided by the FLSA.

**FIRST CLAIM FOR RELIEF:  
FAIR LABOR STANDARDS ACT**

35. Plaintiffs, on behalf of themselves and all Collective Action Members, reallege and incorporate by reference paragraphs 1 through 34 as if they were set forth again herein.

36. At all relevant times, Defendants have been and continue to be, an

employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

37. At all relevant times, Defendants employed, and/or continues to employ, Plaintiffs and each of the Collective Action Members within the meaning of the FLSA.

38. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.

39. Plaintiffs consent in writing to be a party to this action, pursuant to 29 U.S.C. §216(b). Plaintiffs' written consents are attached hereto and incorporated by reference.

40. At all relevant times, the Defendants had a policy and practice of refusing to pay overtime compensation to its employees for their hours worked in excess of forty hours per workweek or making improper deductions from their wages.

41. As a result of the Defendants' willful failure to compensate its employees, including Plaintiffs and the Collective Action members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek or to take improper deductions from their wages, the Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

42. As a result of the Defendants' failure to record, report, credit and/or compensate its employees, including Plaintiffs and the Collective Action members, the Defendants have failed to make, keep and preserve records with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

43. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning 29 U.S.C. § 255(a).

44. Due to the Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the Collective Action members, are entitled to recover from the Defendants, their unpaid overtime compensation, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

**SECOND CLAIM FOR RELIEF:  
NEW YORK LABOR LAW**

45. Plaintiffs, on behalf of themselves and the members of the Class, reallege and incorporate by reference paragraphs 1 through 34 as if they were set forth again herein.

46. At all relevant times, Plaintiffs and the members of the Class were employed by the Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

47. Defendants willfully violated Plaintiffs' rights and the rights of the members of the Class, by failing to pay them overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, and an additional hour of pay for each hour worked in excess of ten hours in one day, and by taking improper deductions from their wages, in violation of the New York Labor Law and its regulations.

48. The Defendants' New York Labor Law violations have caused Plaintiffs and the members of the Class, irreparable harm for which there is no adequate remedy at law.

49. Due to the Defendants' New York Labor Law violations, Plaintiffs and the members of the Class are entitled to recover from Defendants their unpaid overtime compensation, improper wage deductions, damages for unreasonably delayed payment of wages,

reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1)

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs on behalf of themselves and all other similarly situated Collective Action Members and members of the Class, respectfully requests that this Court grant the following relief:

- a. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of the members of the Class and appointing Plaintiffs and their counsel to represent the Class;
- b. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b) and appointing Plaintiffs and their counsel to represent the Collective Action members;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;
- d. An injunction against the Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- e. An award of unpaid overtime compensation and for improper wage deductions due



under the FLSA and the New York Labor Law;

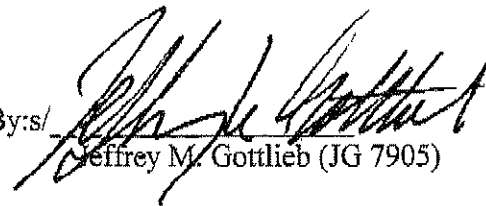
- f. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay overtime compensation and for improper wage deductions pursuant to 29 U.S.C. § 216;
- g. An award of liquidated damages as a result of the Defendants' willful failure to pay overtime compensation and for improper wage deductions pursuant to New York Labor Law;
- h. An award of prejudgment and postjudgment interest;
- i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- j. Such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York  
February 21, 2007

By: s/



Jeffrey M. Gottlieb (JG 7905)

**BERGER & GOTTlieb**

150 East 18<sup>th</sup> Street, Suite PHR  
New York, New York 10003  
Telephone (212) 228-9795  
Facsimile (212) 982-6284

**ATTORNEYS FOR PLAINTIFFS**